

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SLOAN VALVE COMPANY,)	
)	
Plaintiff,)	Case No. 10-cv-00204
)	
vs.)	Judge Amy J. St. Eve
)	
ZURN INDUSTRIES, INC., and ZURN)	
INDUSTRIES, LLC,)	Magistrate Judge Sidney I. Schenkier
)	
Defendants.)	
)	

**JOINT REPORT RELATING TO THE
DAUBERT HEARINGS FOR HARRY J. GWINNELL AND EDWARD M. CAULFIELD**

As required by the Court's written procedures, the parties hereby provide the following Joint Report Relating to the *Daubert* Hearings for Harry J. Gwinnell and Edward M. Caulfield. Mr. Gwinnell's hearing is slated for August 7, 2013 at 9:30 AM. Mr. Caulfield's hearing is slated for August 8, 2013 at 9:30 AM.

WITNESSES

The parties agree that the only witnesses that will be called will be the expert at issue for each respective hearing session.

ORDER OF PRESENTATION

The parties respectfully request to present opening remarks. Defendants, as the movant, will go first in providing opening remarks. Each side will have a maximum of ten (10) minutes for opening remarks, without any rebuttal.

Plaintiff will then present the direct examination of the expert at issue, followed by Defendants' cross-examination. Each side will have the opportunity to conduct **one** re-direct examination or re-cross examination.

For the purpose of these hearings only, and without conceding the relevance of any of the exhibits beyond this hearing, the parties agree that the following exhibits designated herein are admissible without objection, except where otherwise noted. Exhibits shall be moved into evidence at the conclusion of the examinations.

Plaintiff does not think that closing remarks are necessary, but if they are, then closing remarks should be limited to five (5) minutes with Defendants going first. Defendants propose that each side be allotted twenty five (25) minutes for closing arguments with the Plaintiff going first. The parties agree that neither side will present a rebuttal.

ISSUES TO ADDRESS PRIOR TO ARGUMENT

The parties do not anticipate any issue requiring disclosure of confidential information. However, the parties are sensitive to this issue, and anticipate that the Court's standard practice of providing time for redactions before the release of transcripts will suffice to protect any confidential testimony elicited at the hearing.

The parties agree that PowerPoint® or a similar presentation aid may be used during opening and closing arguments, and that such materials may be provided to the Court in hard copy and/or electronic copy. Objections are hereby reserved for any other demonstrative aids or other evidence that any party may seek to offer or otherwise reference during the hearings.

AGREED EXHIBIT LISTS

HARRY J. GWINNELL			
EXHIBIT	EXPERT	SOURCE	DESCRIPTION OF DOCUMENT
1.	Gwinnell	Report	Expert Report dated January 27, 2013 (Dkt. 521-1)
2.	Gwinnell	Report	Exhibit A - Harry J. Gwinnell Curriculum Vitae (Dkt. 521-1)

3.	Gwinnell	Report	Exhibit B - List of Materials Reviewed for the Expert Report (Dkt. 521-1)
4.	Gwinnell	Report	U.S. Patent No. 7,607,635 and its file history
5.	Gwinnell	Report	The Webb Law Firm Opinion dated September 22, 2009, including exhibits (Dkt. 592-16)
6.	Gwinnell	Report	U.S. Patent No. 7,607,635 <i>ex parte</i> reexamination file history Control No.90/009,826
7.	Gwinnell	Report	October 23, 2012, deposition transcript of Paul M. Reznick, including exhibits (Dkt. 598-6)
8.	Gwinnell	Report	October 23, 2012, deposition transcript of Michael Funari, including exhibits (Dkt. 598-1)
9.	Gwinnell	Report	Claim Construction Opinion and Order dated September 13, 2012 (Dkt. 391)
10.	Gwinnell	Report	<i>Knorr-Bremse Systeme Fuer Nutzfahrzeuge GMBH v. Dana Corp.</i> , 383 F.3d 1337 (Fed. Cir. 2004)
11.	Gwinnell	Report	<i>In re Seagate Tech., LLC</i> , 497 F.3d 1360 (Fed. Cir. 2007) (en banc)
12.	Gwinnell	Report	<i>Bard Peripheral Vascular, Inc. v. W.L. Gore & Assocs.</i> , 682 F.3d 1003 (Fed. Cir. 2012)
13.	Gwinnell	Report	<i>Safoco, Inc. v. Cameron Int'l Corp.</i> , No. H-05-0739, 2009 U.S. Dist. LEXIS 66187 (S.D. Tex. July 31, 2009)
14.	Gwinnell	Report	<i>Ultratech Int'l, Inc. v. Swimways Corp.</i> , No. 3:05-cv-134-J-25MCR, 2009 U.S. Dist. LEXIS 80997 (M.D. Fla. Mar. 3, 2009)
15.	Gwinnell	Report	<i>St. Clair Intell. Prop. Consultants v. Palm, Inc.</i> , No. 06-404-JJF-LPS, 2009 U.S. Dist. LEXIS 49922 (D. Del. June 10, 2009)
16.	Gwinnell	Report	<i>Inv. Tech. Group, Inc. v. Liquidnet Holdings, Inc.</i> , 759 F. Supp. 2d 387 (S.D.N.Y. 2010)
17.	Gwinnell	Deposition	Deposition Transcript dated April 18, 2013 (Dkt. 521-2)

18.	Gwinnell	N/A	Federal Civil Jury Instructions of the Seventh Circuit; Instruction No. 11.2.14
EDWARD M. CAULFIELD			
EXHIBIT	EXPERT	SOURCE	DESCRIPTION OF DOCUMENT
1.	Caulfield	Report	Expert Report dated January 28, 2013 (Dkt. 559)
2.	Caulfield	Report	Exhibit A – Edward M. Caulfield, Ph.D. P.E. Testimony Record (Dkt. 559-1)
3.	Caulfield	Report	Exhibit B – Materials Reviewed (Dkt. 571-1)
4.	Caulfield	Report	Funari, Michael Deposition taken 12/16/10 with Word Index and Exhibits
5.	Caulfield	Report	Funari, Michael Deposition taken 10/23/12 with Word Index and Exhibits (Dkt. 598-1)
6.	Caulfield	Report	Reznick, Paul M. Deposition taken 10/23/12 with Word Index and Exhibits (Dkt. 598-6)
7.	Caulfield	Report	Opinion of Non-Infringement by the Zurn Dual Flush Handle Design in View of U.S. Patent Application No. 11/211,273 to Sloan Valve Company (ZP014923-ZP014992)
8.	Caulfield	Report	Zurn Retainer Wear Drawing (ZP000037)
9.	Caulfield	Report	Email from Mike Funari to Anna Rosenstein dated November 14, 2005 Bates ZP224341-ZP224342
10.	Caulfield	Deposition	Deposition Transcript dated May 23, 2013 (Dkt. 559-2 to Dkt.559-4)
11.	Caulfield	Deposition	Exhibit 3 - Edward M. Caulfield Ph.D., P.E. Curriculum Vitae
12.	Caulfield	Deposition	Exhibit 4 - Sanford Community Center Data
13.	Caulfield	Deposition	Exhibit 5 – 1987 Data and SCC006

14.	Caulfield	Deposition	Exhibit 6 – Photograph of Worn Zurn Flush Valve Handle with Brass Bushing (ZP000070)
15.	Caulfield	Deposition	Exhibit 7 – Deposition Summary of Michael Funari Taken December 16, 2010
16.	Caulfield	Deposition	Exhibit 8 – September 22, 2009 Webb Law Firm Opinion Letter (ZP014923-ZP014992) (Dkt. 592-16) Exhibit 16 to <i>Declaration of Jason A. Berta</i>
17.	Caulfield	Deposition	Exhibit 9 - Photographs of Zurn Flush Valve Handles, Retainers, CMM machine etc. (SVC0318103 – SVC0318173)
18.	Caulfield	Deposition	Exhibit 10 – Packer Engineering Photographic Log
19.	Caulfield	Deposition	Exhibit 11 – SVC0318174 – SVC0318205
20.	Caulfield	Deposition	Exhibit 12 – Geometry from CMM
21.	Caulfield	Deposition	Exhibit 13 – Photographs of Coyne & Delany valve
22.	Caulfield	Deposition	Exhibit 251 (previously marked exhibit from Funari 12/16/10 deposition) Handle Life Test (SVC0317812)
23.	Caulfield	Deposition	Exhibit 253 (previously marked exhibit from Funari 12/16/10 deposition) (SVC0317812)
24.	Caulfield	Daubert Motion	Exhibit 4 – Sloan Installation Instructions. Also available at http://www.sloanvalve.com/InstallationGuides/0816558.pdf (Dkt. 559-4)
25.	Caulfield	Daubert Motion	Exhibit 5 - ASSE Standard # 1037 Revised March 1990 Performance Requirements for Pressurized Flushing Devices (Flushometers) for Plumbing Fixtures (Dkt. 571-5)
26.	Caulfield	Daubert Motion	Exhibit 6 – Peter Jahrling October 11, 2010 Deposition Transcript (Dkt. 559-7 to 559-10)
27.	Caulfield	Daubert Motion	<i>Neale v. Volvo Cars of N. Am., LLC</i> , Civ. A.

			No. 2:10-cv-4407 (DMC)(MF), 2013 U.S. Dist. LEXIS 28544 (D.N.J. Feb. 28, 2013) (Dkt. 571-3)
28.	Caulfield	Plaintiff's Memorandum	October 23, 2012 Michael Funari Deposition Transcript (Dkt. 598-1)
29.	Caulfield	Plaintiff's Memorandum	March 6, 2009 Email from Michael Funari to Paul Reznick re results of 6-8 Zurn standard flush valve handles having brass bushings (Dkt. 598-5)
30.	Caulfield	Defendants' Reply Brief	ICC International Plumbing Code (2006 ed.), (Dkt. 600-1 to Dkt. 600-4)

DISPUTED EXHIBIT ISSUES

Plaintiff has identified, but not yet provided copies or access to, the following proposed exhibits. Defendants, having not had the opportunity to review them, object to their use.

	Gwinnell		Materials From Organizational Meetings and Presentations Attended by Mr. Gwinnell
	Caulfield		Physical Exhibit: Piece of Brass

Further, the parties agree to admissibility of the experts' CVs, but were unable to reach a stipulation on admissibility or accuracy of the experts' qualifications.

Date: July 31, 2013

AGREED BY:

The Webb Law Firm PC

Foley & Lardner LLP

/s/ John W. McIlvaine

/s/ Jason A. Berta

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CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2013, I caused to be filed electronically the foregoing **JOINT REPORT RELATING TO THE *DAUBERT* HEARINGS FOR GWINNELL AND CAULFIELD** with the Clerk of the Court using the CM/ECF system, which will send an electronic copy of the foregoing to counsel of record and constitutes service under Federal Rule of Civil Procedure 5(b)(2)(D) pursuant to Local Rule 5.9 of the Northern District of Illinois.

/s/ John W. McIlvaine
Attorney for Defendants, Zurn Industries,
Inc. and Zurn Industries, LLC